

MRS. MYRTLE F. BROCKI

FEBRUARY 21, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4504]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4504), for the relief of Mrs. Myrtle F. Brocki, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to provide that the national service life insurance in the amount of \$10,000 (N13737854, N8474357, N7162728) granted to the late Anselm C. Brocki, who died on April 30, 1949, is to be held and considered to have been in effect at the time of his death, and to direct the Administrator of Veterans' Affairs to pay such insurance in accordance with the National Service Life Insurance Act of 1940, as amended, from the national service life insurance appropriation.

STATEMENT OF FACTS

The facts of this matter are fully set forth in the affidavit of Myrtle Francis Brocki which is as follows:

AFFIDAVIT OF MYRTLE FRANCIS BROCKI

STATE OF MICHIGAN,
County of Wayne, ss.:

Myrtle Francis Brocki, residing in the city of Detroit, Wayne County, Mich., being first duly sworn, deposes and says that she is the widow of Anselm C. Brocki, a deceased veteran of the United States Armed Forces.

Deponent further says that her said husband was insured under national service life insurance certificates No. N716728, dated December 1, 1942, in the principal amount of \$1,000; certificate No. N8474357, dated January 1, 1943, in the principal sum of \$4,000; and certificate No. N13737854, dated August 1, 1943, in the principal amount of \$5,000, so that the total amount of insurance on the life of the veteran was \$10,000, and that deponent was the beneficiary designated in said insurance policies.

Deponent further says that on or about March 1, 1948, the monthly premium in the amount of \$9.05 was due on the insurance policies aforementioned, and there was a grace period of 31 days after said due date within which to make said premium payment, and during said time the insurance was continued in full force and effect.

That during the grace period aforementioned and on or about March 31, 1948, deponent had the funds with which to make said monthly premium payments, and she purchased a money order from the American Express Co. through its agent at Demery's Department Store, in the city of Detroit, and in purchasing said money order deponent instructed the maker to make said order payable to the Treasurer of the United States, and that by mistake of the person writing said money order it was made payable to the Treasurer of Columbus, Ohio, and that the error occurred because the money order payable to the Treasurer of the United States indicated that it should be paid at its office in Columbus, Ohio; that the said money order was forwarded promptly to the Veterans' Administration at Columbus, Ohio, and it was actually received by said Administration prior to the expiration of the grace period provided for the payment of the premiums, and that if the Veterans' Administration had presented said money order for payment it would have been paid within the grace period; that the Veterans' Administration refused to collect the proceeds of the money order because it claimed that the payee in the money order was incorrectly designated; that promptly after deponent learned of the error she immediately forwarded additional money orders to the Veterans' Administration and the Veterans' Administration retained the premiums until on or about March 22, 1949, when they tendered to Anselm C. Brocki the premium refund, and the Veterans' Administration claimed the policies had lapsed.

That the veteran died on April 30, 1949, and deponent made claim for the proceeds due under the life-insurance policies aforementioned, and the Veterans' Administration denied liability because it claimed that the policies had lapsed.

Deponent further says that all premiums from March 1, 1948, through March 1949, had been paid and the Veterans' Administration did not make a tender of premium refund until on or about March 22, 1949, which was just a short period of time before the veteran died, and that during the interval from March 1, 1948, until April 30, 1949, when the veteran died he was not insurable and could not have secured reinstatement.

Deponent further says that the action of the Veterans' Administration in denying liability is unjust and unfair because prior to the expiration of the grace period provided for the payment of premiums the Veterans' Administration had in its possession a money order for collectible funds which would have been paid to it even though it was inartfully designated as payee in the money orders, and that subsequent premiums having been paid, the benefits should have been paid on the death of the veteran.

MYRTLE FRANCIS BROCKI.

Subscribed and sworn to before me this 25th day of July 1955.

MARCELLA MARSTON,

Notary Public, Wayne County, Mich.

My commission expires April 10, 1959.

The committee has carefully reviewed the facts set out in this affidavit together with the report of the Veterans' Administration to this committee which is also appended to this report. In view of the fact that the remittance was sent to the Veterans' Administration within the required time, and the error in the payee designated on the money order was not the fault of Mr. Brocki, this committee feels that the relief provided for in the proposed legislation should be granted to Mr. Brocki's widow. Therefore the committee recommends the favorable consideration of the bill.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS,
Washington, D. C., June 8, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: This has further reference to your request for a report by the Veterans' Administration on H. R. 4504, 84th Congress, a bill for the relief of Mrs. Myrtle F. Brocki, which provides as follows:

"That the national service life insurance in the amount of \$10,000 (N13737854, N8474357, N7162728) granted to the late Anselm C. Brocki, who died on April 30, 1949, shall be held and considered to have been in effect at the time of his death. The Administrator of Veterans' Affairs shall pay such insurance in accordance with the National Service Life Insurance Act of 1940, as amended, except that any payments made as a result of enactment of this act shall be made directly from the national service life insurance appropriation."

Anselm C. Brocki, a veteran of honorable service in the Armed Forces of the United States from November 3, 1942, to June 16, 1945, died on April 30, 1949. While in the service he applied for and was granted a total of \$10,000 national service life insurance under 3 policies issued on the 5-year level premium term plan, for which he designated his wife, Myrtle F. Brocki, as principal beneficiary. Premiums were paid through the month of February 1948, and the insurance lapsed on March 1, 1948, and was not in force on the date of the veteran's death.

Under postmark date of April 1, 1948 (the last day of the 31-day grace period) the veteran remitted an American Express Co. money order made payable to "Treasurer of Columbus, Ohio," to cover the premiums due on March 1, 1948. To avoid delay the Veterans' Administration under date of April 6, 1948, promptly returned the unacceptable remittance without reference to the veteran's individual account, requesting that a corrected remittance made payable to the Treasurer of the United States, be submitted. The request was qualified, however, by further advice that if his account was currently active such remittance must be returned within the 31-day grace period of the due date in order to avoid lapse. However, a corrected remittance submitted by letter postmarked April 14, 1948, could not be accepted as having been timely made since it had not been made within the 31-day period of grace following March 1, 1948, the due date of the premium in default. By letter dated May 18, 1948, the veteran was informed that the insurance had lapsed on March 1, 1948, and that reinstatement was necessary before remittances could be applied to his account. Enclosed were instructions and an appropriate form of application for reinstatement (non-medical) which, if executed by the insured to show that he was in as good health on the date of execution of the application as he was on the date of lapse of his insurance, would have permitted reinstatement on a comparative health basis without necessity for a medical examination.

In reply, the veteran submitted a letter from a department store, whose employee had issued the express money order in question, indicating that the veteran was without fault in its issuance. Under date of June 2, 1948, the Veterans' Administration informed Mr. Brocki to the effect that the error of issuance was made by the store in its capacity as his agent, and that it was mandatory that reinstatement procedure be followed if the account was to be restored to an active status. Another form of application for reinstatement (nonmedical), together with instructions, was enclosed for his use. Since there was no reply to that communication, the Veterans' Administration on July 16, 1948, again forwarded an application for reinstatement together with information to the effect that reinstatement must be made if insurance protection was desired. He was further informed that the executed application must be returned to the Veterans' Administration before July 31, 1948, or it would be necessary that a report of a complete physical examination be submitted. He was also requested to notify the Veterans' Administration immediately of his desires in the matter. No reply having been received, another letter dated September 15, 1948, was released to Mr. Brocki notifying him that if insurance was desired it would be necessary that a report of a complete physical examination be submitted, together with an executed form of application for reinstatement, which form was enclosed for his use.

In his reply of September 30, 1948, the veteran, without indicating why he had failed to reinstate his insurance at a time when reinstatement could have been made on a basis of a comparative health statement, stated in effect that he should not be subjected to a physical examination (for reinstatement), and that the insurance had not lapsed because the American Express money order in question would have been honored upon presentation for payment. Further, he declined to apply for reinstatement because of his expressed belief that he "was not in the wrong in any way."

In an effort to impress upon Mr. Brocki the importance of retaining insurance protection, and of the necessity of following reinstatement procedure in order to accomplish that purpose, a Veterans' Administration employee personally discussed the matter with him on October 27, 1948. Although the veteran

indicated at that time that he would forward an application for reinstatement together with a report of physical examination, he failed to do so. Further, he did not respond to a Veterans' Administration letter of December 28, 1948, reminding him that such an application had not been received. After over a year of unsuccessful effort by the Veterans' Administration, it became apparent that Mr. Brocki did not intend to reinstate his insurance, and a check dated March 22, 1949, representing a refund of all unapplied remittances from April 30, 1948, to September 30, 1948, was released to him. No further remittances or other communication was thereafter received from him.

The action of the office of original jurisdiction in denying the claim of the principal beneficiary, Myrtle F. Brocki, on the ground that the insurance had lapsed on March 1, 1948, and was not in force on the date of the insured's death, was affirmed by the Board of Veterans' Appeals on December 2, 1949.

Section 602 (m) (1) of the National Service Life Insurance Act of 1940 (54 Stat. 1009), as amended by section 6 of the Act of August 1, 1946 (60 Stat. 784; 38 U. S. C. 802), provides in pertinent part:

"The Administrator shall, by regulations, prescribe the time and method of payment of the premiums on such insurance, * * *"

Pursuant to such authority, the Administrator of Veterans' Affairs promulgated regulations which provide that if any premium be not paid when due, the national service life insurance policy shall cease and become void except as otherwise provided in the policy. For the payment of any premium under such a policy, the regulations provide a grace period of 31 days, without interest, during which time the policy will remain in force. It was this provision of the law and regulations issued pursuant thereto, upon which the action of disallowance of Mrs. Brocki's claim for national service life insurance was based.

In accordance with the provisions of section 617 of the National Service Life Insurance Act of 1940, as amended (38 U. S. C. 817), in the event of a disagreement as to any claim arising under such act, subject to certain conditions and limitations, suit may be brought either in the United States District Court for the District of Columbia, or in the district court of the United States in and for the district in which the claimant resides. Such suit may be brought at any time within 6 years after the right accrued for which claim is made, provided that this time limitation is suspended for the period elapsing between the filing in the Veterans' Administration of the claim sued upon and the denial of said claim by the Administrator. There is no record of any such suit having been filed by Mrs. Brocki. She therefore has not exhausted the judicial remedy available to her under existing law to test the correctness of the decision of the Veterans' Administration that there was no national service life insurance in force on the date of the veteran's death.

The validity of a policy of national service life insurance is contingent upon the timely payment of premiums and, if lapsed, upon compliance with reinstatement requirements provided under governing law or regulations. The facts in this case are that the insurance lapsed on March 1, 1948, was not reinstated, and was not in force on the date of the veteran's death. The enactment of H. R. 4504 would be a conclusive legislative determination, contrary to fact, that the national service life insurance granted the veteran was in full force and effect on the date of the veteran's death, thus establishing liability under policies of insurance which, in fact, lapsed prior to death.

The Veterans' Administration is not informed of any basis for singling out the case of Anselm C. Brocki for such legislative treatment. As previously indicated, the Veterans' Administration in ample time and on repeated occasions furnished the veteran full information, urging the necessity of following reinstatement procedure if he was to obtain insurance protection. It is apparent, therefore, that the reason national service life insurance was not in force on the date of the veteran's death was his declination to take steps known by him to have been necessary to obtain such protection. To single out this case for such legislative treatment to the exclusion of other cases which must be denied where similar circumstances exist, would be discriminatory and might serve as a precedent for like treatment in similar cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

H. V. HIGLEY, *Administrator.*